

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAN C.,

Plaintiff,

v.

ANTHEM BLUE CROSS LIFE AND
HEALTH INSURANCE COMPANY dba
ANTHEM BLUE CROSS; DIRECTORS
GUILD OF AMERICA—PRODUCER
HEALTH PLAN; and DOES 1 through
10,

Defendants.

Case No. 2:22-cv-03647 FLA (AFMx)

**[PROPOSED] ORDER
APPROVING STIPULATED
PROTECTIVE ORDER**

Date Action Filed: February 17, 2022
Trial Date: May 23, 2023 at 8:30 a.m.

Having read the parties' stipulated protective order, and for good cause shown, the Court hereby APPROVES the protective order as follows:

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. Despite Plaintiff's contentions with respect to allowable discovery, nothing in this order waives the Plan's right to object to discovery on the basis that it is irrelevant to any issues before the Court and inadmissible in this ERISA action.

B. GOOD CAUSE STATEMENT

This action is likely to involve confidential health information, trade secrets, customer and pricing lists and other valuable research, development, commercial, financial, and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential business or financial information, information regarding confidential business practices, or other confidential research, development, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the

1 parties are entitled to keep confidential, to ensure that the parties are permitted reasonable
2 necessary uses of such material in preparation for and in the conduct of trial, to address
3 their handling at the end of the litigation, and serve the ends of justice, a protective order
4 for such information is justified in this matter. It is the intent of the parties that information
5 will not be designated as confidential for tactical reasons and that nothing be so designated
6 without a good faith belief that it has been maintained in a confidential, on-public manner,
7 and there is good cause why it should not be part of the public record of this case.

8

9 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL**

10 The parties further acknowledge, as set forth in Section 12.3, below, that this
11 Stipulated Protective Order does not entitle them to file confidential information under
12 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
13 standards that will be applied when a party seeks permission from the court to file material
14 under seal.

15 There is a strong presumption that the public has a right of access to judicial
16 proceedings and records in civil cases. In connection with non-dispositive motions, good
17 cause must be shown to support a filing under seal. *See Kamakana v. City and County of*
18 *Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d
19 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics, Inc.*, 187 F.R.D. 576, 577
20 (E.D. Wis. 1999) (even stipulated protective orders require good cause showing), and a
21 specific showing of good cause or compelling reasons with proper evidentiary support and
22 legal justification, must be made with respect to Protected Material that a party seeks to
23 file under seal. The parties' mere designation of Disclosure or Discovery Material as
24 CONFIDENTIAL does not— without the submission of competent evidence by
25 declaration, establishing that the material sought to be filed under seal qualifies as
26 confidential, privileged, or otherwise protectable—constitute good cause.

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1 Further, if a party requests sealing related to a dispositive motion or trial, then
2 compelling reasons, not only good cause, for the sealing must be shown, and the relief
3 sought shall be narrowly tailored to serve the specific interest to be protected. *See Pintos*
4 *v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of
5 information, document, or thing sought to be filed or introduced under seal in connection
6 with a dispositive motion or trial, the party seeking protection must articulate compelling
7 reasons, supported by specific facts and legal justification, for the requested sealing order.
8 Again, competent evidence supporting the application to file documents under seal must
9 be provided by declaration.

10 Any document that is not confidential, privileged, or otherwise protectable in its
11 entirety will not be filed under seal if the confidential portions can be redacted. If
12 documents can be redacted, then a redacted version for public viewing, omitting only the
13 confidential, privileged, or otherwise protectable portions of the document, shall be filed.
14 Any application that seeks to file documents under seal in their entirety should include an
15 explanation of why redaction is not feasible.

16

17 2. DEFINITIONS

18 2.1 Action: *Dan C. v. Anthem Blue Cross Life and Health Insurance Company*
19 *dba Anthem Blue Cross, et al.*

20 2.2 Challenging Party A Party or Non-Party that challenges the designation of
21 information or items under this Order.

22 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
23 is generated, stored or maintained) or tangible things that qualify for protection under
24 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

25 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
26 support staff).

27 2.5 Designating Party: a Party or Non-Party that designates information or items
28 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

1 2.6 Disclosure or Discovery Material: all items or information, regardless of the
2 medium or manner in which it is generated, stored, or maintained (including, among other
3 things, testimony, transcripts, and tangible things), that are produced or generated in
4 disclosures or responses to discovery in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
7 expert witness or as a consultant in this Action.

8 2.8 House Counsel: attorneys who are employees of a party to this Action. House
9 Counsel does not include Outside Counsel of Record or any other outside counsel.

10 2.9 Non-Party: any natural person, partnership, corporation, association or other
11 legal entity not named as a Party to this action.

12 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
13 Action but are retained to represent or advise a party to this Action and have appeared in
14 this Action on behalf of that party or are affiliated with a law firm that has appeared on
15 behalf of that party, and includes support staff.

16 2.11 Party: any party to this Action, including all of its officers, directors, employees,
17 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
19 Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation support services
21 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
22 organizing, storing, or retrieving data in any form or medium) and their employees and
23 subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
25 “CONFIDENTIAL.”

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
27 Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected
3 Material (as defined above), but also (1) any information copied or extracted from
4 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
5 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
6 that might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of the trial
8 judge. This Order does not govern the use of Protected Material at trial.

9

10 4. DURATION

11 Once a case proceeds to trial, information that was designated as CONFIDENTIAL
12 or maintained pursuant to this protective order used or introduced as an exhibit at trial
13 becomes public and will be presumptively available to all members of the public, including
14 the press, unless compelling reasons supported by specific factual findings to proceed
15 otherwise are made to the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at
16 1180-81 (distinguishing “good cause” showing for sealing documents produced in
17 discovery from “compelling reasons” standard when merits-related documents are part of
18 court record). Accordingly, the terms of this protective order do not extend beyond the
19 commencement of the trial.

20

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
23 Party or Non-Party that designates information or items for protection under this Order
24 must take care to limit any such designation to specific material that qualifies under the
25 appropriate standards. The Designating Party must designate for protection only those parts
26 of material, documents, items or oral or written communications that qualify so that other
27 portions of the material, documents, items or communications for which protection is not
28 warranted are not swept unjustifiably within the ambit of this Order.

1 Mass, indiscriminate or routinized designations are prohibited. Designations that are
2 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
3 unnecessarily encumber the case development process or to impose unnecessary expenses
4 and burdens on other parties) may expose the Designating Party to sanctions.

5 If it comes to a Designating Party's attention that information or items that it
6 designated for protection do not qualify for protection, that Designating Party must
7 promptly notify all other Parties that it is withdrawing the inapplicable designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this
9 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
10 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
11 must be clearly so designated before the material is disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic documents, but
14 excluding transcripts of depositions or other pretrial or trial proceedings), that the
15 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
16 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
17 portion of the material on a page qualifies for protection, the Producing Party also must
18 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
19 margins).

20 A Party or Non-Party that makes original documents available for inspection need
21 not designate them for protection until after the inspecting Party has indicated which
22 documents it would like copied and produced. During the inspection and before the
23 designation, all of the material made available for inspection shall be deemed
24 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
25 copied and produced, the Producing Party must determine which documents, or portions
26 thereof, qualify for protection under this Order. Then, before producing the specified
27 documents, the Producing Party must affix the "CONFIDENTIAL legend" to each page
28 that contains Protected Material. If only a portion of the material on a page qualifies for

protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party identifies the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37-1 et seq.

6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a joint stipulation pursuant to Local Rule 37-2.

6.4 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the

1 level of protection to which it is entitled under the Producing Party's designation until the
2 Court rules on the challenge.

3

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with this Action
7 only for prosecuting, defending or attempting to settle this Action. Such Protected Material
8 may be disclosed only to the categories of persons and under the conditions described in
9 this Order. When the Action has been terminated, a Receiving Party must comply with the
10 provisions of section 13 below (FINAL DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a location
12 and in a secure manner that ensures that access is limited to the persons authorized under
13 this Order.

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
15 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
16 may disclose any information or item designated “CONFIDENTIAL” only to:

17 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to
19 disclose the information for this Action;

20 (b) the officers, directors, and employees (including House Counsel) of the
21 Receiving Party to whom disclosure is reasonably necessary for this Action;

22 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
23 is reasonably necessary for this Action and who have signed the “Acknowledgment and
24 Agreement to Be Bound” (Exhibit A);

25 (d) the court and its personnel;

26 (e) court reporters and their staff;

1 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
2 to whom disclosure is reasonably necessary for this Action and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (g) the author or recipient of a document containing the information or a custodian
5 or other person who otherwise possessed or knew the information;

6 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action
7 to whom disclosure is reasonably necessary provided: (1) the deposing party requests that
8 the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted
9 to keep any confidential information unless they sign the “Acknowledgment and
10 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
11 ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions
12 that reveal Protected Material may be separately bound by the court reporter and may not
13 be disclosed to anyone except as permitted under this Stipulated Protective Order; and

14 (i) any mediator or settlement officer, and their supporting personnel, mutually
15 agreed upon by any of the parties engaged in settlement discussions.

16

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
18 OTHER LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation that
20 compels disclosure of any information or items designated in this Action as
21 “CONFIDENTIAL,” that Party must:

22 (a) promptly notify in writing the Designating Party. Such notification shall
23 include a copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to issue
25 in the other litigation that some or all of the material covered by the subpoena or order is
26 subject to this Protective Order. Such notification shall include a copy of this Stipulated
27 Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

**9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to

1 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
2 effect of disclosure of a communication or information covered by the attorney-client
3 privilege or work product protection, the parties may incorporate their agreement in the
4 stipulated protective order submitted to the court.

5

6 **12. MISCELLANEOUS**

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
8 to seek its modification by the Court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
10 Order, no Party waives any right it otherwise would have to object to disclosing or
11 producing any information or item on any ground not addressed in this Stipulated
12 Protective Order. Similarly, no Party waives any right to object on any ground to use in
13 evidence of any of the material covered by this Protective Order.

14 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
15 Material must comply with Local Civil Rule 79-5. Protected Material may only be filed
16 under seal pursuant to a court order authorizing the sealing of the specific Protected
17 Material at issue. If a Party's request to file Protected Material under seal is denied by the
18 court, then the Receiving Party may file the information in the public record unless
19 otherwise instructed by the court.

20 13. **FINAL DISPOSITION**

21 After the final disposition of this Action, as defined in paragraph 4, within 60 days
22 of a written request by the Designating Party, each Receiving Party must return all
23 Protected Material to the Producing Party or destroy such material. As used in this
24 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
25 summaries, and any other format reproducing or capturing any of the Protected Material.
26 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
27 a written certification to the Producing Party (and, if not the same person or entity, to the
28 Designating Party) by the 60 day deadline that (1) identifies (by category, where

1 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
2 the Receiving Party has not retained any copies, abstracts, compilations, summaries or
3 any other format reproducing or capturing any of the Protected Material. Notwithstanding
4 this provision, Counsel are entitled to retain an archival copy of all pleadings, motion
5 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
6 deposition and trial exhibits, expert reports, attorney work product, and consultant and
7 expert work product, even if such materials contain Protected Material. Any such archival
8 copies that contain or constitute Protected Material remain subject to this Protective
9 Order as set forth in Section 4 (DURATION).

10

11 14. **VIOLATION**

12 Any violation of this Order may be punished by appropriate measures, including,
13 without limitation, contempt proceedings and/or monetary sanctions.

14

15 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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17

18

19 Dated: 2/27/2023



20 Hon. Alexander F. MacKinnon
21 United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Central District of California
on [date] in the case of *Dan C. v. Anthem Blue Cross Life and Health Insurance*
Company dba Anthem Blue Cross, et al., Case No. 2:22-cv-03647 FLA (AFMx).

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name:

Signature:

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